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7	Attorneys for Complainant	
8	BEFORE THE RESPIRATORY CARE BOARD DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA	
9		
10	STATE OF CAL	ITOMNIA
11	In the Matter of the Accusation Against:	Case No. R-1948
12	MICHAEL JOSEPH KLAK 1328 Yale Avenue	ACCUSATION
13	Stockton, CA 95203	
14	Respiratory Care Practitioner License No. 9835	
15	Respondent.	
16		ı
17	Complainant alleges:	
18	PARTIES PARTIES	
19	1. Stephanie Nunez (Complainar	t) brings this Accusation solely in her official
20	capacity as the Executive Officer of the Respiratory Care Board of California, Department of	
21	Consumer Affairs.	
22	2. On or about October 7, 1985,	the Respiratory Care Board issued
23	Respiratory Care Practitioner License Number 9835	to Michael Joseph Klak (Respondent). The
24	Respiratory Care Practitioner License was in full force and effect at all times relevant to the	
25	charges brought herein and will expire on February 28, 2006, unless renewed.	
26	<u>JURISDICTION</u>	
27	3. This Accusation is brought be	fore the Respiratory Care Board (Board),
28	Department of Consumer Affairs, under the authority of	of the following laws. All section references are

to the Business and Professions Code unless otherwise indicated.

- 4. Section 3710 of the Code states: "The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act]."
- 5. Section 3718 of the Code states: "The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter."
 - 6. Section 3750 of the Code states:

"The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

- "(f) Negligence in his or her practice as a respiratory care practitioner.
- "(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate any provision or term of this chapter or of any provision of Division 2 (commencing with Section 500).
 - 7. Section 3755 of the Code states:

"The board may take action against any respiratory care practitioner who is charged with unprofessional conduct in administering, or attempting to administer, direct or indirect respiratory care. Unprofessional conduct includes, but is not limited to, repeated acts of clearly administering directly or indirectly inappropriate or unsafe respiratory care procedures, protocols, therapeutic regimens, or diagnostic testing or monitoring techniques, and violation of any provision of Section 3750. The board may determine unprofessional conduct involving any and all aspects of respiratory care performed by anyone licensed as a respiratory care practitioner."

COST RECOVERY

8. Section 3753.5, subdivision (a) of the Code states:

"In any order issued in resolution of a disciplinary proceeding before the board, the

1	board or the administrative law judge may direct any practitioner or applicant found to have committed	
2	a violation or violations of law to pay to the board a sum not to exceed the costs of the investigation and	
3	prosecution of the case."	
4	9. Section 3753.7 of the Code states:	
5	"For purposes of the Respiratory Care Practice Act, costs of prosecution shall include	
6	attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing,	
7	and service fees."	
8	10. Section 3753.1 of the Code states:	
9	"(a) An administrative disciplinary decision imposing terms of probation may include,	
10	among other things, a requirement that the licensee-probationer pay the monetary costs associated with	
11	monitoring the probation. "	
12	FIRST CAUSE FOR DISCIPLINE	
13	(Negligence)	
14	11. Respondent is subject to disciplinary action under sections 3750(f)	
15	[negligence], 3750(g) [any section], 3755 [unprofessional conduct] in that he failed to provide	
16	ordered treatments for two patients. The circumstances are as follows:	
17	PATIENT J.W.	
18	12. On or about January 26, 2003, respondent was employed as a respiratory	
19	therapist at St. Joseph's Medical Center, San Jose, California in the Emergency Department. On	
20	that date, he acted as a relief supervisor. On January 26, 2003 at 1750 hours (5:50 p.m.), J.W.	
21	walked into the Rapid Care area of the Emergency Department with a complaint of congestion and	
22	cough for two weeks. He was diagnosed with bronchitis, and his condition was determined as	
23	minor for prioritization on a scale of urgent/routine/minor.	
24	13. At 1752 hours (5:52 p.m.), a chest x-ray was ordered, and a breathing	
25	treatment of Albuterol 2.5 mg via hand held nebulizer. Respondent was the respiratory therapist	
26	assigned to the area that night, but he did not treat J.W. and he did not chart that he did not treat the	
27	patient. At 1900 hours (7:00 p.m.), the night shift respiratory therapist K.C. delivered the treatment	
28	to J.W. At 1955 hours (7:55 p.m.), J.W. was discharged.	

1	PATIENT M.E.	
2	14. On or about January 25, 2003, at 2046 hours (8:46 p.m.) M.E., an 86 year	
3	old female, came into the Emergency Department on a gurney with a chief complaint of "difficulty	
4	breathing and fever for two days with pain to (sic) her back." The Emergency Room doctor listed	
5	the diagnosis as "acute fever, acute shortness of breath, acute generalized weakness, acute	
6	pneumonia." At 2257 hours (10:57 p.m.), the patient's family physician gave orders to admit.	
7	Doctor's orders stated breathing treatments "every 4 hours." On January 26, 2003, at 0120 hours	
8	(1:20 am.), respiratory therapist K.C. administered the first breathing treatment. She gave	
9	respondent a report of this patient when he took over on the day shift.	
10	A. Respondent did not administer any treatments to M.E. during his shift, and	
11	Respondent did not chart his failure to treat the patient. M.E. next received a breathing treatment	
12	on January 27, 2003, at 0835 hours (8:35 a.m.).	
13	15. Respondent's failure to treat J.W. and M.E. is a departure from the standard	
14	of care and cause to discipline his license pursuant to code sections 3750(f) [negligence], 3750(g)	
15	[any section], and 3755 [unprofessional conduct.]	
16		
17	<u>PRAYER</u>	
18	WHEREFORE, Complainant requests that a hearing be held on the matters herein	
19	alleged, and that following the hearing, the Respiratory Care Board issue a decision:	
20	1. Revoking or suspending Respiratory Care Practitioner License Number	
21	9835, issued to Michael Joseph Klak.	
22	2. Ordering Michael Joseph Klak to pay the Respiratory Care Board the costs	
23	of the investigation and enforcement of this case, and if placed on probation, the costs of probation	
24	monitoring;	
25	///	
26	///	
27	///	
28	///	

1	3. Taking such other and further action as deemed necessary and proper.
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3	DATED: September 21, 2004
4	
5	Original signed by Liana Zimmarman for:
6	<u>Original signed by Liane Zimmerman for:</u> STEPHANIE NUNEZ Executive Officer
7	Respiratory Care Board of California Department of Consumer Affairs State of California
8	State of California Complainant
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